

Application No.: 09/813,214
Amendment Dated: December 13, 2005
Reply to Office Action of: June 13, 2005

Attorney Docket No.: 71515 089 999
Customer No.: 35161

REMARKS

This Amendment is in response to the Office Action mailed on June 13, 2005, for the present application, which has been reviewed. Considered together with the following remarks, the arguments below and request for reconsideration are believed sufficient to place the application into condition for allowance. No new matter has been added to the application. Applicants express appreciation for the thoughtful examination by the Examiner.

Support for the amendments can be found in the specification as follows:

Amendment to claim 1: page 31, lines 15-20;
Amendment to claim 7: page 53, lines 20-23.
Amendment to claims 53, 60, 62: page 29, lines 1-10.
Newly presented claims 57 and 59: page 53, lines 20-26, page 31, lines 15-20.

The present invention is drawn to the *Moraxella catarrhalis* outer membrane protein (OMP106) polypeptide and nucleotide sequences encoding an OMP106, immunogenic compositions and vaccines comprising an effective amount of said polypeptide. The present invention confers protection against disease or treatment thereof caused by infections with said species of *Moraxella catarrhalis*.

ELECTIONS/RESTRICTIONS

The previous Office Action makes final the previous restriction requirement and now withdraws claims 13-16, 27, 29, 35, and 40 as being a patentably distinct, drawn to a non-elected invention. Nevertheless, in order to further the prosecution of this application, and without acquiescing to the Examiner's withdrawal of the claims while reserving the right to prosecute the original claims in the future, Applicants have withdrawn claims 13-16, 27, 29, 35,

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and 40. Applicant preserves the right of petition from this Requirement for Restriction under 37 C.F.R. §1.144 and Applicant reserves the right to file one or more continuing applications on the withdrawn claims. If any independent claim(s) are allowed, we request the removal of the Restriction Requirement for any claims that are dependent as originally filed from the allowed independent claims in this application.

SPECIFICATION

The specification has been amended to more accurately indicate the Continuity Data of this application.

As requested in the present action, the Abstract of the Disclosure has been amended to comply with MPEP § 608.01(b).

Rejection of Claims 58-63 Under 35 U.S.C. § 101 Should Be Withdrawn

The present Office Action rejects claims 58-63 under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Further, Applicants submit this rejection is rendered moot by the foregoing amendments. Applicants have amended claims 58-63 to recite "an isolated OMP106 polypeptide", distinguishing the claims over the naturally occurring polypeptide.

Rejection of Claims 3-4 Under 35 U.S.C. § 112, First Paragraph Should Be Withdrawn

The present Office Action rejects claims 3-4 under 35 U.S.C. section 112, first paragraph as containing subject matter which was not described in the specification in such a way to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Application No.: 09/813,214
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Further, Applicants submit this rejection is rendered moot by the foregoing amendments and the following comments. In order to further the prosecution of this application, and without acquiescing to the Examiner's rejection and while reserving the right to prosecute the original claims (or similar claims) in the future, Applicants have cancelled claims 3-4.

Rejection of Claims 1-8, 52-54, 57, and 59-64 35 U.S.C. § 112, First Paragraph Should Be Withdrawn

The present office action rejects claims 1-8, 52-54, 57, and 59-64 under 35 U.S.C. section 112, first paragraph as not complying with the written description requirements. Applicants respectfully traverse this rejection and request favorable reconsideration and withdrawal of this rejection. Further, Applicants submit this rejection is rendered moot by the foregoing amendments and the following comments.

The standard for a rejection under 35 U.S.C. §112, first paragraph for lacking written description is established in O.G. Official Guidelines of 2001. Applicants respectfully traverse this rejection and request favorable reconsideration and withdrawal of this rejection. Further, Applicants submit this rejection is rendered moot by the foregoing amendments and the following comments.

The standard for a rejection under 35 U.S.C. §112, first paragraph for lacking written description is established in O.G. Official Guidelines of 2001. Applicant wishes to point out that the structure and properties of the claimed polypeptide meets this requirement by describing the common attributes or characteristics that identify members of the genus which includes polypeptides having a sequence at least 80% identical to SEQ ID NO: 1 and OMP106 derived polypeptides. This rejection is deemed moot in view of the following amendments. The scope of these amended claims is narrowly drawn to a limited number of biosequences recognized by an

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antibody that specifically binds a polypeptide having defined amino acid sequences. All claims are limited to defined amino acid sequences in addition to immunogenic properties; therefore, these polypeptides must have a conserved structure and is clearly immunogenic to *Moraxella catarrhalis*.

Rejection of Claim 64 Under 35 U.S.C. § 112, Second Paragraph Should Be Withdrawn

The present Office Action rejects claim 64 under 35 U.S.C. section 112, second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants submit this rejection is rendered moot by the foregoing comments. In the present specification, on page 36, lines 9-12 recite the exact metes and bounds of the term "high stringency condition".

Applicants appreciate the Examiners indication of claim 58 being allowed.

In light of the foregoing, Applicant therefore believes claims 1-8, 13-16, 27, 29, 35, 40, 52-54, and 57-64 are in condition of allowance, and respectfully requests such allowance.

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CONCLUSION

In light of the foregoing, Applicants respectfully submit they have addressed each and every item presented by the Examiner in this Office Action. Favorable reconsideration of all of the claims as amended is earnestly solicited. Applicants submit that the present application, with the foregoing claim and specification amendments and accompanying remarks, is in a condition for allowance and respectfully request such allowance.

In the event any further matters requiring attention are noted by Examiner or in the event that prosecution of this application can otherwise be advanced thereby, a telephone call to Applicants' undersigned representative at the number shown below is invited.

Respectfully submitted,


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